

# **MINUTES OF THE REGULAR MEETING OF THE COUNCIL OF COMMISSIONERS**

**JANUARY 21, 2009**

The Regular Meeting of the Council of Commissioners was called to order Wednesday, January 21, 2009 in the Council Chambers, Third Floor, Room 312, Courthouse Building, 155 West Granite Street, Butte, Montana by Chief Executive, Paul Babb.

## **ROLL CALL**

11 present, 1 absent. Commissioner Sheehy was excused.

## **PRAYER**

Commissioners Lee led the commissioners in prayer

## **APPROVAL OF THE MINUTES OF THE REGULAR MEETINGS OF 12/17/08, 12/30/08 AND 1/7/09**

**It was moved by Commissioner Palmer, seconded by Commissioner Lee and carried by a unanimous verbal vote to approve the Minutes of the Regular Meetings of 12/17/09 and 12/30/09 and 1/7/09.**

## **ITEMS NOT ON THE AGENDA – SUSPENSION OF THE RULES**

None

## **PUBLIC COMMENT ON ANY PUBLIC MATTER NOT ON THE AGENDA**

None

## **CHIEF EXECUTIVE'S REPORT**

Chief Executive Babb reported that he and Chuck Carrig met with the State Historic Preservation Office today. They praised Chuck Carrig for what he has done since he has started with Butte-Silver Bow. We are off probation. We told them that we have the guidelines that will be coming to council and we are hoping to have a presentation before council sometime in February. They also talked about some funding sources that would help us in the case of what we had on Silver Street where a landowner would be willing to make some improvements, but for one reason or another may not have the dollars to do that. How could the state and the federal government work with us so that we could help with

mitigating circumstances to offer (whether it's revolving loan funds or grants) to help out when we are asking somebody to do something on their private property.

Last Saturday night the premier of "Butte, America" was at the Mother Lode Theatre. A very well-done documentary. A DVD will be coming out in the Fall.

The Parks and Recreation Department adopted the Parks and Recreation Master Plan last week. It is their intent to bring that before the council in February with a presentation and then move forward with the adoption of that plan.

We have been working on the stimulus package to make sure that Butte-Silver Bow has shovel-ready projects that will be able to be in the pipeline once the President does announce how the stimulus plan is going. At the same time we will be putting in our appropriations for 2010.

Our community can be very proud of the turnout for Martin Luther King, Jr. speech by Aaron Thompson. There was a turnout of about 100 people.

## **SECTION I**

### **PRESENTATION COMMUNICATION NO. 09-55**

Mary Spangler, Coach, Kennedy Elementary School, requesting time on the 1/21/09 agenda for a presentation by the Rockin' Robots on the U.S. Mayors Climate Protection Agreement and also asking authorization for Chief Executive to sign the agreement.

Jason Rasmussen came to the microphone to fill in for Mary Spangler who could not make it for tonight. He said this is a national program. There are 20-30 schools in Montana that participate. The students did their presentation.

**It was moved by Commissioner Palmer, seconded by Commissioner Lee and carried with a unanimous verbal vote that we place this communication on file, but we do forward the Climate Protection Agreement to our Energy Efficiency Committee.**

## **SECTION II**

### **PRESENTATION COMMUNICATION NO. 09-03**

Ellen Crain requesting time on the 1/21/09 agenda to make a presentation regarding the progress on the Archive's second bond sale and construction of the Archives vault and rehabilitation of the existing building. **(Communication No. 09-03 being held in Committee of the Whole.)**

Ellen Crain, Archives Director, and Dave Fawcett, Chairman of the Technical Review Committee gave a power point presentation. The architects from A. and E Architects in Missoula also spoke briefly. Also speaking was Doug Oswood, president of Oswood Construction and the contractor chosen for the building of the Archives.

## **SECTION III**

## **PUBLIC HEARING**

**TO SOLICIT COMMENT CONCERNING THE ANNUAL UPDATE OF THE BUTTE-SILVER BOW TRANSIT PARATRANSIT PLAN. (Communication No. 09-16 being held in Committee of the Whole.) Proof of publication was noted and placed on file.**

Gary Keeler, Transit Director, explained the need of this public hearing. It is to satisfy an annual requirement to hold a public hearing to provide the council an update regarding Butte-Silver Bow compliance with Americans with Disability Act.

Chief Executive Babb opened the public hearing at 8:30PM and called for any proponents. On the third and final call, there being none he then called for opponents. Again, there was no response so he closed the public hearing at 8:21PM.

## **SECTION IV**

## **CONSENT AGENDA**

- A.**
  - 1. COMMITTEE OF THE WHOLE MEETING REPORT
  - 2. FINANCE AND BUDGET COMMITTEE MEETING REPORT
  - 3. JUDICIARY COMMITTEE MEETING REPORT
  - 4. PUBLIC WORKS COMMITTEE MEETING REPORT

### **B. COMMUNICATIONS**

Before entertaining a motion to approve the Consent Agenda, Chief Executive called for any “friendly amendments” or segregations. Commissioner Palmer called for a “friendly amendment” on Item No. 35. The Communication number should be 09-63. Commissioner Shaw said 09-31 and 09-32 are both transfer requests and they did not have dates. The date is January 14, 2009. She segregated 09-49, No. 24. Commissioner Hall segregated No. 11, Communication 09-33.

**It was moved by Commissioner Palmer, seconded by Commissioner Lee and carried by a unanimous verbal vote to approve the Consent Agenda, Items A, 1 through 4 and B , 1 through 35 exclusive of item No. 24 and No. 11.**

### **Segregation of Communication 09-33**

Bob Rowling, Parks and Recreation Director, seeking modification of contract between city-county and John De Witt, Pro Shop Manager, Highland View Golf Course.

Commissioner Hall said she was concerned about the fact that Mr. De Witt is not actually working for the county but he is receiving percentages of the sales and he also has his own little business there that the county is paying the expenses on. County Attorney Joyce explained the contract was already was already approved by this council. The communication concerns the fact that this was a renewal of a contract that Mr. De Witt already had with the city-county and in the initial contract there was an addendum that had been entered into that allowed Mr.

DeWitt to receive a portion of the trail fees. That was inadvertently omitted when this renewal of the contract was submitted to the Council of Commissioners, and Mr. Rowling's communication simply asks that the council allow those trail fees continued to be paid as they were with the initial contract, and to modify the renewal contract to recognize that these trail fees should be included.

**It was moved by Commissioner Palmer, seconded by Commissioner Lee and carried with all present and 1 voting against to concur with the request in the Communication No. 09-33 and place on file. Commissioner Hall voted nay.**

#### **Segregation of Communication No. 09-49**

Rob Macioroski, Land Records Department, requesting approval of sale and authorization of preparation of a resolution of sale of vacant lands in 1100 block of Caledonia Street

Commissioner Shaw said she segregated this item because it is zoned R 1 and 2. It would require a variance to move it up to R3. The neighborhood is almost completely single family resident homes, and the residents are opposed to this. **She made a motion to deny the request of 09-49 to approve this sale and refer the 1100 block of Caledonia back to the Land Sales Department for further review and place on file. The motion was seconded by Commissioner Palmer. On the question, Commissioner Moodry said he would like to hear from someone who could speak towards the decision and the original recommendation. Rob Macioroski, Land Records Director and Chairman of the Land Sales Committee, said they realized the developers would have hoops that they are going to have to jump through. We are not actually going to transfer the property to them until they make it through the zoning and the requirements that are going to be required. We thought we owed the developers a chance and see if they can work with the neighbors to make something that may be appeasable to everybody.**

County Attorney Joyce said it makes more sense to her that if the Council were to make that determination that the action that the Council would take would be to authorize the city-county to enter into an option agreement with JAC Ventures in order to put those conditions in because it doesn't make a lot of sense to authorize a resolution of sale to them when we are not certain that we're going to be able to follow through on that sale.

Commissioner Foley asked if the neighbors were willing to compromise. Commissioner Shaw said yes. If it went back to a developer packet, I think everybody would agree with anything within a R1 or R2 designation as a single family home or even a duplex.

County Attorney Joyce said her suggestion would be that we go along with the recommendation of the Land Sales Committee that it not prepare a resolution for sale but that we prepare an option agreement.

**Commissioner Moodry made a substitute motion to concur with the Land Sales Committee's original recommendation with the exception that the agreement will be an option rather than a sale. Commissioner Granger seconded the motion. On the question, Commissioner Palmer said he could not support the motion. A roll call vote of 5 yeas and 6 nays. Motion fails so now back to the original motion. A roll call vote of 7 yeas and 4 nays was taken. Voting nay were Commissioners Frasz, Moodry, Morgan and Granger.**

## **SECTION V                      COMMUNICATIONS TO BE ACTED UPON**

1. 09-45            Mark Moodry, Commissioner District 7, requesting authorization for hiring Mr. J. D. Lynch as Butte-Silver Bow's lobbyist for 2009 Montana Legislative Session.

**It was moved by Commissioner Palmer, seconded by Commissioner Lee to allow the Chief Executive to negotiate a contract with J. D. Lynch not to exceed \$8,000.00 on a hourly basis. Commissioner Moodry seconded the motion. Commissioner Frasz added an amendment to the original motion that in addition to Mr. Palmer's motion he would like to have a report at the end of the Legislative session as to what was obtained by having this contract and report back to council. A roll call vote of 4 yeas and 7 nays was taken. Voting nay were Commissioner Shaw, Kronenberger, Schultz, Morgan, Foley, Granger and Hall.**

2. 09-48            Paul Babb, Chief Executive, requesting concurrence in appointment of Dan Dennehy as the Public Works Director.

Chief Executive Babb passed out a project list that shows what Mr. Dennehy has done as the Interim Public Works Director. He shared his vision of the Public Works Department.

**It was moved by Commissioner Palmer, seconded by Commissioner Lee and carried with a unanimous verbal vote to concur with the request in the appointment of Dan Dennehy as Public Works Director.**

3. 09-60            Dave Palmer, Council Chairman, requesting Chief Executive

**Commissioner Palmer explains his communication and moved to concur with the request and direct the Chief Executive to appoint and Ad Hoc Committee. The motion was seconded by Commissioner Lee and passed with a unanimous verbal vote.**

## 1. COUNCIL RESOLUTION NO. 09-4

## 2. COUNCIL RESOLUTION NO. 09-6

### 3. COUNCIL RESOLUTION NO. 09-7

**1. COUNCIL BILL NO. 08-9  
ORDINANCE NO. 08-**

AN ORDINANCE AMENDING SECTION 2 OF BUTTE-SILVER BOW

ORDINANCE NO. 134 AND SECTION 204.010 ( c ) OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB); ADJUSTING THE ANNUAL SALARY OF THE SHERIFF AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner Palmer, seconded by Commissioner and carried with a roll call vote of 11 yeas, 0 nays and 1 absent to place Council Bill No. 08-9, Ordinance No. 08-9 on second reading and passed having been deemed fully read at length.**

## **SECTION VIII                      ORDINANCES AND RESOLUTIONS – FINAL READING**

### **1.                      COUNCIL RESOLUTION NO. 08-100**

A RESOLUTION VACATING, CLOSING, DISCONTINUING AND ABANDONING THAT PORTION OF THE ALLEY WITHIN BLOCK 1 OF THE TRASK ADDITION WITHIN THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PRESCRIBING THE EFFECTIVE DATE OF THIS RESOLUTION AND FINDING THE NECESSARY FACTS HEREIN. **It was moved by Commissioner Palmer, seconded by Commissioner Lee and carried with a roll call vote of 11 yeas, 0 nays and 1 absent to place Council Resolution on final reading and passed having been deemed fully read at length**

### **2.                      COUNCIL RESOLUTION NO. 08-101**

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO THE BUTTE-SILVER BOW COMMUNITY DEVELOPMENT DEPARTMENT FROM THE UNITED STATES DEPARTMENT OF JUSTICE TO THE CITY AND COUNTY OF BUTTE-SILVER BOW TO BE EXPENDED ON BULLETPROOF VESTS FOR LAW ENFORCEMENT OFFICERS AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner Palmer, seconded by Commissioner Lee and carried with a roll call vote of 11 yeas, 0 nays and 1 absent to place Council Resolution No. 08-101 on final reading and passed having been deemed fully read at length.**

### **3.                      COUNCIL RESOLUTION NO. 09-2**

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO THE BUTTE-SILVER BOW CLERK AND RECORDER'S OFFICE, ELECTIONS BUDGET, FROM THE MONTANA

SECRETARY OF STATE FOR ELECTION JUDGE REIMBURSEMENT TO BE EXPENDED IN THE GENERAL FUND AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. It was moved by Commissioner Palmer, seconded by Commissioner Lee and carried with a roll call vote of 11 yes, 0 nays and 1 absent to place Council Resolution No. 09-2 on final reading and passed having been deemed fully read at length.

**4. COUNCIL RESOLUTION NO. 09-3**

RESOLUTION RELATING TO \$3,000,000 GENERAL OBLIGATION BONDS, SERIES 2009; AUTHORIZING THE ISSUANCE AND CALLING FOR THE PUBLIC SALE THEREOF. It was moved by Commissioner Palmer, seconded by Commissioner Lee and carried with a roll call vote of 11 yeas, 0 nays and 1 absent to place Council Resolution No. 09-3 on final reading and passed having been deemed fully read at length.

**SECTION IX ORDINANCES AND RESOLUTIONS  
SUSPENSION OF THE RULES**

It was moved by Commissioner Palmer, seconded by Commissioner Lee and carried by a roll call vote of 11 yeas, 0 nays and 1 absent too move for the suspension of the Rules for the purpose of passing Council Resolution No. 09-5 by waiving subsection 7 of Rule XXXVI of the Rules and Order of Business of the Council of Commissioners, thereby having it considered for advanced passage without reference to the Judiciary Committee.

**1. COUNCIL RESOLUTION NO. 09-5**

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO THE BUTTE-SILVER BOW HARD ROCK ECONOMIC DEVELOPMENT FUND TO BE EXPENDED FOR THE PURPOSE OF ECONOMIC DEVELOPMENT WITHIN THE CITY AND COUNTY OF BUTTE-SILVER BOW. It was moved by Commissioner Palmer, seconded by Commissioner Lee and carried by a roll call vote of 11 yeas, 0 nays and 1 absent to place Council Resolution No. 09-5 on final reading and passed having been deemed fully read at length.

**ADJOURN**

There being no further business to come before the Council, it was moved by Commissioner Palmer, seconded by Commissioner Lee and carried by a unanimous verbal vote to Rise the Call of the Chair.



The meeting adjourned at 9:45 PM.

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CHIEF EXECUTIVE

ATTEST:

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CLERK AND RECORDER

